

ESTTA Tracking number: **ESTTA418150**

Filing date: **07/06/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Abbott Laboratories
Granted to Date of previous extension	07/06/2011
Address	100 Abbott Park Road Abbott Park, IL 60064 UNITED STATES
Attorney information	Cheryl A. Withycombe Abbott Laboratories 100 Abbott Park Road Dept. 0377, Bldg. AP6A-1 Abbott Park, IL 60064 UNITED STATES trademarks@abbott.com Phone:847-937-5121

Applicant Information

Application No	85130772	Publication date	03/08/2011
Opposition Filing Date	07/06/2011	Opposition Period Ends	07/06/2011
Applicant	Second Wind Vitamins, Inc. Suite 111 1392 High Street Wadsworth, OH 44281 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. First Use: 2009/06/00 First Use In Commerce: 2009/06/00
All goods and services in the class are opposed, namely: Dietary supplemental drinks in the nature of vitamin and mineral beverages; Powdered nutritional supplement drink mix

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	965204	Application Date	06/09/1972
Registration Date	07/31/1973	Foreign Priority Date	NONE
Word Mark	ENSURE		
Design Mark			


Description of Mark	NONE
Goods/Services	Class U046 (International Class 005). First use: First Use: 1972/03/17 First Use In Commerce: 1972/03/17 LIQUID NUTRITIVE PREPARATIONS FOR ORAL OR GAVAGE FEEDING

U.S. Registration No.	1051691	Application Date	04/02/1976
Registration Date	11/02/1976	Foreign Priority Date	NONE
Word Mark	ENSURE PLUS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1976/03/09 First Use In Commerce: 1976/03/09 LIQUID NUTRITIVE PREPARATIONS FOR ORAL OR GAVAGE FEEDING		

U.S. Registration No.	1485012	Application Date	09/02/1987
Registration Date	04/19/1988	Foreign Priority Date	NONE
Word Mark	ENSURE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 005. First use: First Use: 1986/10/29 First Use In Commerce: 1986/10/29 DIETARY FOOD SUPPLEMENTS; NAMELY, VITAMINS AND MINERALS IN A FLAVORED PUDDING BASE		

U.S. Registration No.	2509140	Application Date	04/18/2000
Registration Date	11/20/2001	Foreign Priority Date	NONE
Word Mark	ENSURE HEALTH CONNECTION		
Design Mark	<p style="text-align: center;">ENSURE HEALTH CONNECTION</p>		
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 1996/05/31 First Use In Commerce: 1996/05/31 newsletters and brochures containing information relating to nutrition Class 042. First use: First Use: 1996/05/31 First Use In Commerce: 1996/05/31 providing information regarding nutrition via telephone and on-line		

U.S. Registration No.	3115099	Application Date	07/02/2004
Registration Date	07/11/2006	Foreign Priority Date	NONE

Word Mark	ENSURE HEALTHY MOM
Design Mark	
Description of Mark	NONE
Goods/Services	Class 005. First use: First Use: 2005/03/21 First Use In Commerce: 2005/03/21 Dietetic substances adapted for medical use, namely, nutritionally fortified beverages, bars and powders, and meal replacement beverages, bars and powders

Attachments	76028722#TMSN.gif (1 page)(bytes) 78445134#TMSN.jpeg (1 page)(bytes) ENS NOO Abt.pdf (3 pages)(20281 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Cheryl A. Withycombe/
Name	Cheryl A. Withycombe
Date	07/06/2011

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of
Trademark Application Serial No.: 85/130,772
Filed: September 16, 2010
Published: March 8, 2011
Mark: ENS

ABBOTT LABORATORIES,)	
)	
Opposer,)	
v.)	Opposition No. _____
)	
SECOND WIND VITAMINS, INC.)	
)	
Applicant.)	
)	

NOTICE OF OPPOSITION

Opposer, Abbott Laboratories (hereafter “Opposer”), an Illinois corporation having a principal place of business at 100 Abbott Park Road, Abbott Park, IL 60064, believes it will be damaged by registration of the mark shown in Trademark Application No. 85/130,772 and hereby opposes that application, alleging as grounds for its opposition that:

1. As is evidenced by the publication of the mark ENS in the Official Gazette in the March 8, 2011, issue, Applicant, Second Wind Vitamins, Inc. (hereafter “Applicant”), seeks to register ENS as a trademark for “dietary supplemental drinks in the nature of vitamin and mineral beverages; powdered nutritional supplement drink mix,” in International Class 5. Applicant filed its application on September 16, 2010, under Section 1(a) of the Trademark Act, claiming June, 2009, as its first use of the mark and June, 2009, as its first use of the mark in commerce.

2. Opposer is a leading pharmaceutical healthcare company with a broad range of products, including nutritional products to create a better quality of life for people of all ages. In

particular, Opposer's ENSURE nutritional supplements help build and maintain lean body mass, help build strong bones, help support one's immune system and help gain or maintain a healthy weight.

3. Opposer owns U.S. Trademark Registration Nos. 965,204 for ENSURE, 1,051,691 for ENSURE PLUS, both for "liquid nutritive preparations for oral or gavage feeding," 1,485,012 for ENSURE for "dietary food supplements; namely, vitamins and minerals in a flavored pudding base," 3,115,099 for ENSURE HEALTHY MOM for "dietetic substances adapted for medical use, namely, nutritionally fortified beverages, bars and powders, and meal replacement beverages, bars and powders", all in International Class 5, and 2,509,140 for ENSURE HEALTH CONNECTION for "newsletters and brochures containing information relating to nutrition in Class 16, and providing information regarding nutrition via telephone and on-line in Class 42." Opposer's ENSURE trademark Registration No. 965,204 was filed on June 9, 1972, which registered on July 31, 1973, claiming first use and first use in commerce at least as early as March 17, 1972.

4. Opposer's registered ENSURE marks are also valid and subsisting and are prima facie evidence of Opposer's exclusive rights to use the mark in connection with the goods identified therein.

5. Opposer's ENSURE marks were applied for and registered on the Principal Register and used in commerce prior to the filing date of Applicant's application for ENS and prior to Applicant's first use dates.

6. As a consequence of Opposer's extensive use and promotion of its ENSURE marks in commerce, the marks have become well known to identify Opposer's goods. As a result, Opposer's ENSURE marks have become a valuable asset of Opposer and a principal symbol of its goodwill.

7. Given the similarity of the parties' marks and the identical nature of the parties' goods, Opposer hereby alleges that Applicant's ENS mark so resembles Opposer's ENSURE marks used in the United States, and not abandoned, as to be likely to cause confusion or to cause mistake or to deceive and to dilute the value and source-identifying power of Opposer's marks, thereby causing loss, damage, and injury to Opposer and the public.

8. Opposer prays that this Notice of Opposition be sustained, that Applicant's Trademark Application Serial No. 85/130,772 be rejected, and that Applicant be denied registration of ENS as a trademark for the goods as specified in that application.

9. This Notice of Opposition is being submitted along with the requisite \$300.00 fee to oppose the application. Please charge any additional fees to our Deposit Account No. 010025-6336.